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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,310	08/05/2003	Daniel L. Mork	23338	7871
24932	7590	05/06/2004	EXAMINER	
LAW OFFICE OF LAWRENCE E LAUBSCHER, JR			SUN, XIUQIN	
1160 SPA RD			ART UNIT	
SUITE 2B			PAPER NUMBER	
ANNAPOLIS, MD 21403			2863	

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/634,310	<b>Applicant(s)</b> MORK, DANIEL L.	
	<b>Examiner</b> Xiuqin Sun	<b>Art Unit</b> 2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.                                                |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Diaz et al. (U.S. Pat. No. 5,890,128) in view of Bimbaum (U.S. Pat. No. 6,605,044).

Diaz et al. teach a food and exercise aid (see Abstract), comprising: (a) a memory for storing nutritional information for a variety of food items and metabolic equivalent information for a variety of exercises (col. 13, lines 19-31 and col. 15, lines 5-17); (b) a controller connected with said memory for controlling the selection of information to be obtained from said memory (col. 15, lines 5-17); (c) a calculator connected with said memory for calculating individual calorie burning rates based on the exercise characteristics and the user's personal data, such as age, sex, weight, height and lifestyle, which the user enters into the system or selects from the memory (col. 13, lines 19-36; ); and (d) a display connected with said memory and with said calculator for displaying the nutritional and metabolic equivalent information and the calculated exercise duration time (col. 13, lines 36-38; and col. 15, lines 26-45). Diaz et al. further

teaches: said memory further stores weight information which can be displayed on the display and used by said calculator for said calculation (col. 15, lines 33-45); said memory comprises a food memory for storing the nutritional information, an exercise memory for storing the metabolic equivalent information and a weight memory for storing the weight information (col. 1, lines 5-7; col. 13, lines 19-38; and col. 15, lines 33-45); an input selector connected with said controller for selecting a food item, an exercise and a weight from said food, exercise and weight memories, respectively (col. 13, lines 19-38; col. 15, lines 5-17 and lines 33-45).

Diaz et al. do not mention explicitly: calculating and presenting an exercise duration time necessary to burn the calories of a selected food item via a selected exercise.

Bimbaum discloses a caloric exercise monitor method for monitoring a person's caloric expenditure during exercising (see Abstract), and teaches: calculating and presenting an exercise duration time necessary to burn the calories of a given food item via a given exercise (col. 2, lines 35-42; cols. 5-6, lines 2-57).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the teaching of Bimbaum in the invention of Diaz et al. in order to provide a device and method for food and exercise management that is capable of measuring the consumption of calories and that further enabling an individual to set an exercise goal and observe how many calories/unit time are being burned and how much more exercise time is required at the current caloric burn rate to complete the exercise goal (Bimbaum, col. 1, lines 45-50).

***Allowable Subject Matter***

3. Claim 5 is allowed.

***Reasons for Allowance***

4. The following is an examiner's statement of reasons for allowance:

The primary reason for the allowance of claim 5 is the claimed method step of calculating the duration of exercise necessary to burn off the calories of the food item after consumption by the individual according to the formula

$$T = \text{kcal} / \text{MET} \times 3.5 \times W / 200$$

where T is the exercise time, in minutes; kcal is the number of kilocalories for the selected food item; MET is the metabolic equivalent for the selected exercise; and W is the selected weight of the individual, in kilograms. It is this limitation found in the claim, as it is claimed in the combination that has not been found, taught or suggested by the prior art of record, which makes this claim allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Contact Information***

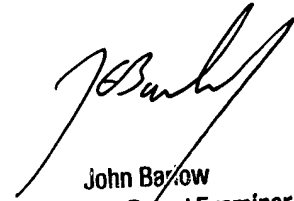
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xiuqin Sun whose telephone number is (571)272-2280. The examiner can normally be reached on 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571)272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Xiuqin Sun  
Examiner  
Art Unit 2863

XS  
XS  
April 20, 2004.

  
John Barlow  
Supervisory Patent Examiner  
Technology Center 2800